IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 728 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUKHABHAI RAMABHAI BHARVAD

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

MR KG SHETH, Learned APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2000

C.A.V.JUDGEMENT

1. The petitioner has preferred this petition under Articles 14, 19, 21 and 226 of the Constitution of India

challenging the order of externment passed by the Sub Divisional Magistrate, Palitana on 23.2.2000 in Externment Case No. 6 of 1999 and confirmed in Appeal before the Appellate Authority under Section 60 of the Bombay Police Act,1951 (for short "the said Act).

2. The petitioner has contended that the authorities have not properly applied mind. That date, time and place of the events in the notice have not been disclosed. That as per notice, the petitioner was required to be externed out of the limits of Junagadh Districts, but while passing final order the said District has been omitted without assigning any reason. That the judgements and orders recorded by the two Authorities are illegal and erroneous and deserve to be quashed and set aside. Therefore, the petitioner prays that the petition be allowed and aforesaid orders of the two Authorities be quashed and set aside.

3. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appears for the State. I have heard learned advocates for the parties and have perused the papers.

4. The learned advocate for the petitioner has submitted that notice was issued without due application on mind. That the said notice is placed at Annexure-A, page-8 dated 20.9.1999. It has been issued by the Sub Divisional Magistrate, Palitana. It has been arguned that the grounds are vague in the notice under Section 59 of the said Act. The learned advocate for the petitioner further states that the said authority has considered offence and conviction recorded against the petitioner as per the description given at page-2 of the notice. Now, if we turn to internal page -3 we can find that three offences are shown to have been registered against the petitioner at Palitana Town Police Station being Crime Register Nos. 25, 28 and 52 of 1999. Last column shows that all the cases were pending at the date of the notice. There is no mention about conviction recorded against the petitioner in all or any of the three offence. It shows that the petitioner was not convicted for any offence. Even the learned advocate for the petitioner has also made a statement that the petitioner was never convicted for any offence. Internal page-2 of the notice will indicate that the conviction is shown to have been standing against the petitioner which is an erroneous statement of fact which further indicates that the notice has been issued without due and proper application of mind. Then in the said ground, it has been mentioned that the petitioner was indulging in

several criminal activities. However, it is nowhere stated as to which at place the said activities were carried on by the petitioner. It has also not been stated that as to time at which the said activities were carried out by the petitioner and dates are also not recorded. Therefore, date, time and place have not been indicated in the said notice. Even approximate period has not been indicated in the said notice. This did not provide reasonable opportunity to the petitioner to know real allegations against the petitioner.

5. On this line, we can refer to a decision of the Division Bench of this Court in the case of Rajput Ranjitsing Jatubhai Vs. Vinay Vyas, Sub Divisional Magistrate, Palanpur & Others, reported in 1986 (1) GLR 478, there, It has been observed as under :

> "A mere look at the allegations shows that they suffer from the vice of vagueness viz. (i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It must, therefore, be held that the petitioner got no reasonable opportunity to show cause against the proposed externment on the allegations contained in the aforesaid show cause notice.
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> But if the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through."

6. This shows that when the grounds are of general nature and vague then in that case it does not provide reasonable opportunity to the petitioner to know real allegations against the petitioner. Therefore it is not possible to meet with the situation and consequentially, the notice issued under Section 59 of the said Act cannot be treated to be legal. This being the position further proceedings taken against the petitioner, can also not be sustained.

7. Then we can turn to the notice again wherein it has been indicated that the petitioner was required to be externed out of the limits from so many district including Junagadh District. So far final orders are concerned, the said fact is omitted meaning thereby that the petitioner has been externed out of the limits from so many districts excluding Junagadh District. So he was

proposed to be externed out from Junagadh District at the time of issuance of notice. While passing ultimate order, the authority did not find it proper to extern him out from the limits of the Junagadh District. It is not clear as to whether this is a simple omission to indicate Junagadh District or there is application of mind to the point in order to hold that it was not really necessary to extern the petitioner out from Junagadh District. There is no discussion on this aspect of the case found in the judgment and order of the Externing Authority. Even the Appellate Authority does not appear to have considered this aspect of the case. Therefore, there is again a case of non application of mind.

8. In the aforesaid view of the matter, I am of the view that the aforesaid judgments and orders of the aforesaid two authorities suffer from the aforesaid infirmities. In that view of the matter, order of externment passed against the petitioner and confirmed in appeal cannot be sustained in view of the above infirmities.

9. In the aforesaid view of the matter, the present petition is allowed. The judgements and orders passed by the learned Sub Divisional Magistrate, Palitana in Externment Case No. 6 of 1999 on 23.2.2000 and confirmed in Appeal on 29.4.2000 by the third respondent are quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.P.Buch,J)
(vipul)